A.C. NO. 13380	:	SUPREME COURT
MAURICE HANSEN, ET AL.	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
THE CITY OF NEW HAVEN, ET AL.	:	JUNE 26, 1995
	:	

PETITION TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

FOR CERTIFICATION FROM THE APPELLATE COURT

The Estate of Maurice Hansen, duly represented by a properly substituted party appellant, Mrs. Margaret Hansen, hereby petitions the Supreme Court of the State of Connecticut for certification to appeal from the affirmation by the Appellate Court of an erroneous judgment of the Superior Court in this case.

1. The questions presented for review are as follows:

a. Did the trial court err in denying the Appellant's motion to articulate dated March 8th, 1994, whereby the Appellant asked the trial court judge to clarify the dates of performance by Plaintiff under the contract specifying the beginning to the end of Plaintiff's performance under the contract.

b. Did the Appellate Court err in granting Appellant's Motion for Review dated April 6th, 1994, but denying Appellant's requested Relief on May 25th, 1994, when Appellant has a constitutional right to appeal and such denial thereby amounts to a denial of procedural process of

law, and a further denial of the estate's property interest in Appellant's performance under the contract.

c. Did the Court err in allowing parole evidence to come in to explain an 'omitted' or ambiguous term, and upon opening the door to such evidence as stated on the record, allowing the defendant to submit documents evidencing what their expectations were, but when Plaintiff sought to admit their bid proposal to explain what Plaintiff's expectations were, the Court denied such offer to the prejudice of Plaintiff's case.

d. Did the Court err in considering count two, or the Restitutionary Court [sic] prior to the Breach of Contract count, thereby clearing making a ruling contrary to the evidence regarding parole evidence, and practically all other findings by the trier of fact.

e. Did the Court err in finding that the Plaintiff rescinded the contract on September 14th, 1987, which was not accepted by the Defendant, and the Defendant rescinded on October 21st, 1987, when the clear weight of the evidence supports a rescission date of June of 1987 when the Defendant told Plaintiff to turn in keys to the warehouses, and both parties testified that this was the case, even though the formal documentation of rescission came in September for Plaintiff and in October for Defendant.

f. Did the Court err in finding damages based upon expectation for breach of contract for the Plaintiff as of the September date which was not accepted by the Defendant, instead of

the October date wherein Plaintiff, was still performing.

g. Did the Court err in only awarding damages based upon the contract through September when the record is clear that Plaintiff performed up through December of 1987.

h. Did the Court err in finding for the Defendant on the second count of the complaint when the Plaintiff still performed after the date of October (as found by the trial court), and thereby entitled to his out-of-pocket expenses as stated in the contract.

i. Did the Court err in awarding damages based upon expectation for only nine months when the weight of the evidence clearly demonstrates that the Plaintiff worked on the contract December through October (if the Court is correct), which amounts to over nine months.

j. Did the Court err in concluding that the Defendant did not receive a net gain here as a result of Plaintiff's efforts and in light of the evidence introduced at trial.

k. Did the Court err in denying Plaintiff restitution for the months of work after rescission occurred, whatever that date is determined to be.

l. Did the Court err in not comprehending that in this factual situation, that recovery could and should be based upon both expectational and restitutionary interests.

m. Did the Court err in denying Plaintiff his claim for bins constructed by Plaintiff when the error made was the draftor's error and should be determined against the draftor.

n. Did the Court err in stating that the Plaintiff did not adequately prove his damages for the construction of bins when both parties testified as to the cost of such bins, and both sides acknowledged Plaintiff to have constructed said bins.

o. Did the Court err in concluding that the Plaintiff did not in fact object to the contract until September when the trier heard evidence from both sides that both parties agreed to switch roles and Defendant would take over the operation of the storage facilities in June of 1987 but evidenced later due to the busy schedules, etc. and Plaintiff told Defendants of his intent to rescind.

2. The basis for certification is as follows:

Pursuant to Section 4127(3), where as here, the Appellate Court has so far departed from the accepted and usual course of Judicial Proceedings, or so far sanctioned such a departure by any other Court, as to call for an exercise of the Supreme Court of Connecticut 'Supervisory Powers'; The Appellate Court has sanctioned the trial court's decision to adjudge Plaintiff's equitable cause of action before the legal cause of action, thereby manipulating the facts, and denying Plaintiff his day in Court, and his relevant property interests. Pursuant to Section 4127(4), an important question of great public importance exists: Should the trial court deny a motion to articulate, and the Appellate Court sanction such denial, when the factual determination inquired about, the dates of performance under the contract, are essential facts to Plaintiff's appeal, the denial of which abridges Plaintiff's statutory right to appeal, thereby denying Plaintiff's estate his day

in court, and further violates his constitutional rights under the Due Process Clause, including his estate's property interest in the Decedent's performance. The Appellate Court here has sanctioned a denial of Plaintiff's constitutional rights, making this even more egregious whereby Plaintiff/Appellant has died, and the Appellate Court should be more, not less, vigilant of the rights of the deceased.

3. The facts are the Plaintiff owned and operated a moving and storage business known as Hansen Trucking Company. The Defendant City of New Haven sought proposals through publication of people interested in contracting with the City in order to relieve it of its duties pursuant to C.G.S. Section 47a-42, requiring the City to move, haul, and store evictee goods and belongings. Both Plaintiff and Defendant entered into a written contract on December 12, 1986, whereby said effective dates of the contract were to be retroactive to December 1, 1986 through December 1st, 1987. The Plaintiff accepted said terms of said contract and employment, and substantially performed the services thereunder up to June of 1987. When Plaintiff had not received one check from Defendant for performance after six months, despite the fact that the contract called for monthly payments to Plaintiff, Plaintiff communicated his dissatisfaction with Defendant and turned in keys to the storage facilities in June of 1987. Plaintiff thereby, based upon the Defendant's breach of non-payment, and his formal act of turning in the keys, amounted to Plaintiff's rescission of the contract as of this date. The trial court found rescission to occur at the date alleged by Defendant, or October of 1987, but only allowed Plaintiff his damages until September of

1987, the date the court found Plaintiff to have rescinded. Although Plaintiff performed for the entire contract period, or until December of 1987, the Court only paid Plaintiff through September. The Plaintiff alleged breach of contract in count one, and restitution in count two. The Court decided the equitable issue first, and then decided the breach of contract issue second. The Plaintiff also claimed damages for bin construction under the contract, which was denied by the court.

3. [sic] The trial court found for Plaintiff on count one, or the breach of contract count, in the amount of $2500.00. It denied count two, or the restitutionary count and decided for the defendant on that count. The trial court never did specify the dates of performance, but did pay Plaintiff until September of 1987, although finding the actual date of rescission to be October of 1987. The trial court nowhere specifies the dates of performance although asked to specify said dates in Plaintiff's motion to articulate.

The Appellate Court affirmed by a per curiam decision.

4. Appellant performed under a contract with the defendant, whereby both parties rescinded at some point. The trial court never specified the dates of performance. The trial court only allowed payment under the contract until September, although Plaintiff performed through December of 1987. The trial court, when asked to specify the dates of performance, material to Plaintiff's case, thereby refused.

5. The appendix is Exhibit A, attached. Exhibit B is Appellant's Motion For Review. Exhibit C is the Order of the Appellate Court granting Appellant's motion for

review, but denying the relief sought. Exhibit D is Appellant's motion to reargue, while Exhibit E is the denial of that motion. Exhibit F is the per curiam decision of the Appellate Court.

5. [sic] Appellant, Margie Hansen, as Administrator of the Estate of Maurice Hansen, 2 Northeast Drive, North Haven, Connecticut 06473. Phone: 239-4794; Counsel: Frank Cannatelli, 7 S. Main St., Branford, Conn. 06405; Phone: 483-1066. Juris No. 308656. Appellees, City of New Haven, Care of City Clerk, 200 Orange Street, New Haven, Conn. 06510. Phone: 787-8346. Counsel for Defendants: Aileen Bell, 165 Church Street, New Haven, Conn. 06510. Phone: 787-7958. Juris No. 42715.